

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Anthony E. Held, Ph.D., P.E. and Fishman and Tobin Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr. Held”) and Fishman and Tobin Inc. (“Fishman”), with Dr. Held and Fishman collectively referred to as the “Parties.” Dr. Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Fishman employs ten or more persons and is a person in the course of doing business for purposes of California Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Dr. Held alleges that Fishman has manufactured, distributed, and/or sold in the State of California footwear containing excessive amounts of di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is identified by the State of California as a chemical known to cause birth defects and other reproductive harm. DEHP shall be referred to herein as the “Listed Chemical.”

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as follows: footwear containing the Listed Chemical that are manufactured, imported, distributed, and/or sold in California by Fishman, including, but not limited to, *Nautica Flip Flops, #20B32X, HT1623 (#0 48283 15614 4)*. All such items are referred to herein as “Products.”

#### 1.4 Notice of Violation

On or about February 24, 2011, Dr. Held served Fishman and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Fishman and such public enforcers with notice that Fishman was alleged to be in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products

exposed users in California to the Listed Chemical. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Fishman denies the material, factual, and legal allegations contained in Dr. Held's Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Fishman of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Fishman of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Fishman. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Fishman under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 10, 2011.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

As of the Effective Date, Fishman shall not ship, sell or offer to be shipped for sale in California any Product unless it is a "Reformulated Product," which is a Product containing DEHP in concentrations less than 1,000 parts per million (the "DEHP Standard") in each accessible component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

## **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement against it, Fishman shall make payments totaling \$3,500.00 in civil penalties, to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State of

California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies remitted to Dr. Held as provided by Health & Safety Code § 25249.12(d). Fishman shall issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler Group in Trust for OEHHA" in the amount of \$2,625.00, representing 75% of the total penalty, and (b) one check to "The Chanler Group in Trust for Anthony E. Held" in the amount of \$875.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,625.00. The second 1099 shall be issued to Dr. Held in the amount of \$875.00, whose address and tax identification number shall be furnished upon request. The payments shall be delivered on or before July 25, 2011, to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Fishman then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure §1021.5, for all work performed through the mutual execution of this agreement. Fishman shall pay the total of \$18,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Fishman's attention, and negotiating a settlement in the public interest. Fishman shall make the check payable to "The

Chanler Group,” shall issue a separate 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before July 25, 2011, to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

This Settlement Agreement is a full, final and binding resolution between Dr. Held on behalf of himself and the public interest and Fishman, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and successors in interest (“Fishman Releasees”), and each entity to whom Fishman and Fishman Releasees distribute or sell Products, including downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Downstream Fishman Releasees”) of any violation of Proposition 65 that was asserted by Dr. Held against Fishman, Fishman Releasees, and Downstream Fishman Releasees, based on their failure to warn about alleged exposure to the Listed Chemical contained in the Products that were sold by Fishman.

### **5.2 Dr. Held’s Public Release of Proposition 65 Claims.**

In further consideration of the promises and agreements herein contained, Dr. Held on behalf of himself, his agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, limited to and arising under Proposition 65 with respect to the Listed Chemical in the Products sold by Fishman (collectively “claims”), against Fishman, Fishman Releasees, and Downstream Fishman Releasees.

### **5.3 Dr. Held's Individual Release of Claims.**

Dr. Held also, in his individual capacity only and not in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Dr. Held of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed Chemical in the Products manufactured, distributed or sold by Fishman.

### **5.4 Fishman's Release of Dr. Held.**

Fishman on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Dr. Held, his attorneys, agents, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Dr. Held and his attorneys, agents, and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

## **6. SEVERABILITY**

If subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

## **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or the Listed Chemical, then Fishman shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by (i) personal delivery, (ii) first-class, registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the other party at the following addresses:

For Fishman:

Mark Fishman, President  
Fishman and Tobin, Inc.  
4000 Chemical Road, Suite 500  
Plymouth Meeting, PA 19462

With a copy to:

Melissa Jones  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
Sacramento, CA 95814

For Dr. Held:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

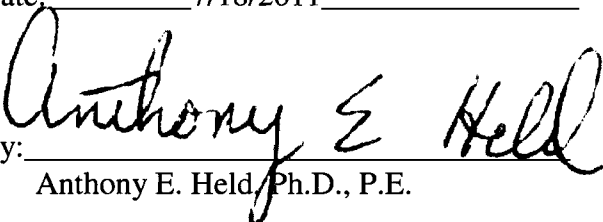
Dr. Held agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

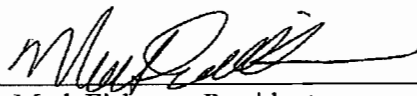
|   |  |
|---|--|
| <b>AGREED TO:</b>   | <b>AGREED TO:</b>  |
| Date: <u>7/18/2011</u>  | Date: _____  |
| By: <br>Anthony E. Held, Ph.D., P.E. | By: _____<br>Mark Fishman, President<br>Fishman and Tobin Inc. |

11. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

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The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

|   |   |
|---|---|
| <b>AGREED TO:</b>                         | <b>AGREED TO:</b>   |
| Date: _____                               | Date: <u>7/14/11</u>  |
| By: _____<br>Anthony E. Held, Ph.D., P.E. | By: <br>Mark Fishman, President<br>Fishman and Tobin Inc. |